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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/747,924

Filing Date: December 29, 2003

Appellant(s): LAFORTUNE, JEFFREY MARK

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Bryan R. Rosiejka  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/19/2007 appealing from the Office action mailed 1/16/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party of interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,604,313	MCFARLAND et al.	08-1986
5,700,559	SHEU et al.	12-1997

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. Claims 1, 2, 4-12 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFarland et al. (US 4,604,313) in view of Sheu et al. (US 5,700,559).

i. McFarland et al. teach an absorbent article comprising polymeric and wood fibers (Abstract). The article comprises a first layer comprising polymeric and wood fibers, but no SAPs and at least one additional layer of the same make up as the first, except it does include SAPs. The first layer acts to aid in trapping of any super-absorbent which is not immediately entangled in the meltblown and wood fibers and prevents its passing through the forming belt. The first layer also is the preferred body side in use as it will not be slimy and will feel drier than the super-absorbent containing side (col. 2, lines 26-48).

The Example details the use of fluff cellulosic fibers. The applied invention is silent as to the treatment of the components of the absorbent article to modify their charge.

ii. Sheu et al. teach the process of making an absorbent article more hydrophilic by using an ionic polymeric layer with a polyelectrolyte coating upon the polymeric layer (Abstract). The hydrophilicity that is gained by treating articles with corona discharge and plasma exposure degenerates after treatment (col. 1, lines 6-13). The process of Sheu

et al. does not suffer from such limitations (col. 3, lines 18-26) and may be used in diapers to make the article hydrophilic, wettable and wickable (col. 5, lines 62-65).

iii. Since McFarland et al. and Sheu et al. are from the same field of endeavor, (i.e. absorbent articles) the purpose disclosed by Sheu et al. would have been recognized in the pertinent art of McFarland et al.

iv. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have coated the first layer of the McFarland et al. invention with the ionic coating of Sheu et al. The skilled artisan would have been motivated by the desire to create an absorbent article with retained wettability and wickability as described by Sheu et al.

v. Claim 5 is rejected as the treatment may be restricted to the external surface of the article, which contains no SAPs. Claims 7-10 are rejected as they properties are necessarily present following the treatments taught by Sheu et al.

B. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFarland et al. (US 4,604,313) in view of Sheu et al. (US 5,700,559) as applied to claim 1 above, and further in view of Kellenberger (US 5,147,343). McFarland et al. and Sheu et al. are silent as to the specific size of the superabsorbent particles and their size distribution.

i. Kellenberger teaches an absorbent composite comprising a porous matrix of fibers and superabsorbent (SAP) material (Abstract). Several examples are taught by Kellenberger including Example VIII with 57% of the SAP particles between 300 and 600 micrometers.

- ii. Since McFarland et al. and Kellenberger are from the same field of endeavor, (i.e. absorbent composites comprising a porous matrix of fibers and superabsorbent (SAP) material) the purpose disclosed by Kellenberger would have been recognized in the pertinent art of McFarland et al.
- iii. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of McFarland et al. with over 50% of the SAP particles with a size between 300-600 microns with the motivation of creating an article with sufficient permeability and surface area for absorption.

**(10) Response to Argument**

- A. Appellant's arguments filed 4/19/2007 have been fully considered but they are not persuasive.
- B. Appellant argues that Examiner has relied upon improper hindsight to reconstruct the claimed invention. In response to Appellant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner has only relied upon knowledge which was within the level of ordinary skill at the time the claimed invention was made and as such has not relied upon improper hindsight to reject the claimed invention.

Appellant has not identified that information relied on that could be gleaned solely from appellant's disclosure.

C. Appellant argues that McFarland and Sheu are nonanalogous art as proposed by the Office. McFarland is directed to an absorbent article and Sheu is directed to treating a variety of articles to make them more hydrophilic. Included in the articles in which it would be desirable to increase their hydrophilicity, wettability or wicking ability are diapers and other liners (col. 5, lines 62-65). "[D]iapers and other liners..." comprise absorbent articles that are available for use in the same manner as those described in McFarland. Therefore, McFarland and Sheu are in fact analogous art.

D. Appellant argues that there is no motivation to utilize a reference, such as Sheu, which teaches a process to make a hydrophobic item wettable, in combination with an already wettable invention. As described by Sheu, the applied process increases the treated object's ability to wick and wet, which leads to a superior product when compared to its untreated form. Not all of the treated articles listed in Sheu are hydrophobic. Increasing an absorbent object's ability to wick and wet in turn allows it to better perform in its intended function.

E. Appellant argues that the properties of hydrophilicity, wettability and wickability do not equate to improved fluid intake as claimed by the instant invention. An increase in wettability and wickability does in fact increase the rate in which an object can absorb fluids. Therefore, it results in increased hydrophilicity, wettability and wickability.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Matthew D Matzek/  
Examiner, Art Unit 1771

/Terrel Morris/  
Terrel Morris  
Supervisory Patent Examiner  
Group Art Unit 1771

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Conferees:

Terrel Morris  
/Terrel Morris/  
SPE, 1771

Jennifer Kolb-Michener  
/Jennifer Michener/  
Quality Assurance Specialist, TC1700